

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

SUSAN C. SPRY,
Register No. 04322-090,

Petitioner,

v.

CIVIL ACTION NO. H-06-1122

TYRANNE MORGAN,

Respondent.

MEMORANDUM OPINION AND ORDER

Petitioner, Susan C. Spry, has filed a "Motion for Writ of Habeas Corpus Pursuant to Title 28 U.S.C. § 2241, and Civ.RP Rule 60(b)(6)" (Docket Entry No. 1). The United States has filed a Motion to Dismiss for Failure to State a Claim (Docket Entry No. 7), to which petitioner has filed replies (Docket Entry Nos. 8 and 10). A section 2241 petition is used to attack the manner in which the Bureau of Prisons carries out a sentence. Because Spry attacks the validity of her sentence, not the manner in which it is being executed, her motion is actually a section 2255 motion.

Spry complains of a 152-month sentence imposed by the United States District Court for the Western District of Wisconsin. Respondent states, and Spry does not dispute, that she previously filed a Motion for Relief Pursuant to 28 U.S.C. § 2255, which was denied by the sentencing court, and that she filed a Motion for

Reconsideration, which was also denied; and the United States Court of Appeals for the Seventh Circuit denied a Certificate of Appealability.

It is clear from the motion, and from the Motion to File a Reply (Docket Entry No. 8 at pp. 7-9), that the crux of Spry's present motion is her argument that she did not receive a full and adequate consideration of the arguments she previously raised in her § 2255 motion. Because the instant motion raises challenges to her conviction that were or could have been raised in an earlier section 2255 motion, it is a second or successive section 2255 motion. See United States v. Orozco-Ramirez, 211 F.3d 862, 867 (5th Cir. 2000).

Rule 9 of the Rules Governing Section 2255 Proceedings for the United States District Courts states:

Before presenting a second or successive motion [for relief under § 2255] the moving party must obtain an order from the appropriate court of appeals authorizing the district court to consider the motion as required by 28 U.S.C. § 2255, para. 8.

Spry has not sought permission from the Court of Appeals for the Seventh Circuit to pursue this action. It is well established that "[a] petition for writ of habeas corpus pursuant to [section] 2241 is not a substitute for a motion under [section] 2255." Pack v. Yusuff, 218 F.3d 448, 452 (5th Cir. 2000). This case does not fall within the extremely limited circumstances when a remedy under section 2255 is inadequate.

Because this court does not have jurisdiction, the government's Motion to Dismiss for Failure to State a Claim (Docket Entry No. 7) is **GRANTED**. Spry's Motion to Strike Respondent's Motion to Dismiss (Docket Entry No. 8 at p. 5), for judgment on the pleadings (id. at p. 9), and request for the appointment of counsel and for delay to seek pro bono counsel (Reply to Court's Order, Docket Entry No. 10, at pp. 2 and 3) are **DENIED**.

SIGNED at Houston, Texas, on this the 15th day of June, 2006.



SIM LAKE
UNITED STATES DISTRICT JUDGE